

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 GONZALO CONTRERAS-CRUZ,

4
5 Plaintiff,

6 v.

7 VICTOR RIVERA-GONZALEZ, in
8 his personal and official
9 capacities, et al.,

10 Defendants.

Civil No. 04-1565 (JAF)

11 **ORDER**

12 Three police officers were sued and went to a civil trial for
13 violation of civil rights, 42 U.S.C. § 1983. Plaintiff claimed that
14 the first two physically assaulted him during a police intervention,
15 and the third allegedly failed to intervene and defend while part of
16 the claimed assault was in progress.

17 The jury discharged the two assaulting officers of liability and
18 denied relief to Plaintiff in the excessive use of force and assault
19 charge. However, the jury decided in favor of the Plaintiff and
20 against the third police officer, assessing damages in the amount of
21 \$3,000.

22 In practical terms, the jury found no preponderant evidence
23 establishing the assault. Unexpectedly, however, they granted \$3,000
24 in damages to Plaintiff against the third officer for failing to stop
25 an unproven assault.

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1 The facts against the third officer, seen in the light most
2 favorable to Plaintiff, only prove that while the third officer ate
3 a sandwich or light meal at a large teaching room in a police
4 precinct, the Plaintiff was assaulted at the other end of the
5 "academy" room, and the third officer failed to intervene.

6 There can be no doubt that an officer may be held liable not
7 only for his personal use of excessive force, but also for his
8 failure to intervene, in appropriate circumstances, to protect an
9 arrestee from the excessive use of force by his fellow officers.
10 Wilson v. Town of Mendon, 294 F.3d 1, 6 (1st Cir. 2002). However, an
11 underlying aspect of the rule in Wilson is that there was an
12 excessive force by fellow officers. An essential aspect of finding
13 a "failure to intervene" that arises to the level of a violation of
14 civil rights is the requisite that a constitutional violation has
15 been committed. Absent a constitutional violation, there can be no
16 failure to intervene.

17 Such result can be reached by examining Supreme Court case law
18 involving municipal liability. The Supreme Court has held, in a case
19 involving a municipality, that there is no authority for "the award
20 of damages against a municipal corporation based on the actions of
21 one of its officers when in fact the jury has concluded that the
22 officer inflicted no constitutional harm." City of Los Angeles v.
23 Heller, 475 U.S. 796, 800 (1986). If a municipal corporation cannot
24 be held liable absent a constitutional violation by its officers, it

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1 is elementary that the same logic would extend to a police officer
2 who is charged with failure to intervene when there was no
3 constitutional harm committed by the fellow officers. Simply, there
4 cannot be an actionable "failure to intervene" that rises to the
5 level of a constitutional harm if the jury failed to find that the
6 assault by fellow officers indeed occurred.

7 The motion for judgment as a matter of law, *no obstante*
8 *veredicto*, Fed. R. Civ. P. 50, is **GRANTED**. The verdict against
9 police officer Alex D. Cuevas-Quiles is set aside. Judgment shall be
10 entered dismissing the complaint in conformity with the jury verdict
11 and this Order.

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 7th day of September, 2005.

14 S/José Antonio Fusté
15 JOSE ANTONIO FUSTE
16 Chief U. S. District Judge